Department Summary and Responses to Public Comments
MS4 General Permit (WI-S050075-1)
January 2006

The Wisconsin Department of Natural Resources' proposed Municipal Separate Storm Sewer System (MS4) General Permit No. WI-S050075-1 was originally public noticed from November 2, 2004 until December 24, 2004. However, the public comment period was extended until January 7, 2005.

Note: A construction site general permit and 2 industrial storm water general permits were also public noticed during the same period. Some of the comments below apply to those permits as well. Public comments and Department responses to the other storm water general permits will be addressed separately.

Certain comments were general in nature but most were related to specific sections of the MS4 general permit. Specific comments and the Department's responses are organized below in the order of the section of the permit to which they relate. Editorial corrections and other minor corrections are not included in this comment summary.

The Department appreciates all of the comments that were submitted by the following parties:

City of Appleton	
Earth Tech	
FMR	Friends of Milwaukee's Rivers
MEA	Midwest Environmental Advocates
NEWSC	Northeast Wisconsin Stormwater Consortium
NRDC	Natural Resources Defense Council
NWF	National Wildlife Federation
RAW	River Alliance of Wisconsin
WTA	Wisconsin Towns Association

GENERAL COMMENTS

1. Comment: (FMR) The DNR should be commended on many good and progressive elements to the proposed MS4 general permit, which are more protective than federal requirements including requiring permits for areas that are adjacent to urbanized areas and planned to have a density of 500 people per square mile, requiring permits for areas with a population of 10,000 + and population density of 1,000 people /square mile, and requiring permits for areas adjacent to population centers of 10,000 people/1,000 people per square mile that are planned for density of 1,000 people/square mile. These permit requirements should be retained.

Response: On these particular issues, the DNR does not believe that it is going beyond the federal regulations, but has clarified the extent to which it applies.

2. Comment: (WTA) We do not believe the 90 towns that are listed in ch. NR 216 as requiring a stormwater discharge permit should receive this general permit. Many parts of this permit do not apply to towns because towns manage stormwater runoff in a significantly different manner than the villages, cities and counties as follows:

1. Grassed Swales-Towns discharge stormwater primarily through grassed swales rather than underground storm sewer pipes. These grassed swales provide treatment of the stormwater prior to discharge to waters of the state. The Wisconsin Stormwater Manual estimates that 70% of the Total Suspended Solids, 30% of the Total Phosphorous, 25% of Total Nitrogen and 50%-90% of the Trace Metals (page 2, Chapter 7, Vol. 2) are removed from stormwater through grassed swale treatment. Towns should be given credit for these stormwater treatment devices that has already been installed.
2. Large Lot Sizes- Towns also have large lot sizes that are required by ordinance. Due to these large lots, almost all of the roof downspouts are disconnected and infiltrate into the ground prior to leaving the site and many landowners also do not fertilize their lawns.
3. Residential Land Use- The major land use in these towns are residential which is also the least polluted type of runoff when compared to industrial and commercial runoff.
4. Agricultural Land Use- Although some parts of the permit apply to the outfalls in the urbanized areas (illicit discharge monitoring, stormwater outfall identification, etc.), other portions of the permit such as the spill cleanup ordinance and stormwater ordinance apply to all of the town. Since many of the urban towns are still predominately agricultural, the right to control an agricultural runoff source is an issue between the state/county and the individual agricultural land-owner and should not be a part of this general stormwater permit.

We request that a general permit be issued for towns alone to account for these differences. Separate general permits have been issued previously under subch. II of NR 216 for industrial classifications such as the general permit for the auto salvage and scrap industry. (Dismantling of Vehicles for Parts Selling and Salvage General permit, WPDES Permit No. WI-S059145-1)

Response: The MS4 general permit has been developed to apply to all types of municipal systems including city, village, town, county, state and federal MS4 systems. Some conditions of the permit may not be applicable to certain MS4s or the MS4 operator may utilize other municipal ordinances or activities to satisfy the conditions of this permit. Implementation of the conditions of this permit will vary, and it will vary from one municipality to the next, not just on the basis of its governmental structure. The DNR believes that this MS4 general permit is appropriate for use in regulating town MS4 discharges.

3. Comment: (NEWSC) Many of the permit requirements are open to interpretation. The DNR should consider developing guidelines and procedures to ensure fair and consistent interpretation of this permit.

Response: The MS4 permit sets minimum requirements consistent with federal requirements, but is designed to provide each municipality with flexibility in designing storm water management programs that are appropriate for its MS4, including the area under its jurisdiction that enters its MS4. The DNR will be developing additional guidance to help clarify implementation issues. The DNR will be making its guidance available on its storm water web site via: http://www.dnr.state.wi.us/org/water/wm/nps/stormwater.htm

4. Comment: (MEA) The proposed permit must require water quality monitoring to ensure that storm water discharges do not cause a violation of water quality standards.
Comment: (MEA) The WPDES permit must explicitly require compliance with water quality standards, and should require periodic ambient water quality monitoring to coincide with wet weather events to measure compliance with water quality standards.
Comment: (MEA) To ensure that the WPDES permit will meet water quality standards, the WPDES permit should require periodic ambient water quality monitoring beneath outfalls to

coincide with wet weather events. This is needed to demonstrate the BMPs identified in the WPDES permit are sufficient to meet the goals of the Clean Water Act.

Response: Given the many factors that influence the level of pollutants discharged in storm water, it requires significant resources to monitor and determine pollutant discharge loadings and the effectiveness of storm water management practices. Storm water pollutant levels vary by orders of magnitude depending on rainfall intensity, time between storms, when in the hydrograph a measurement is taken, etc. Due to such varying conditions, we have established that monitoring individual discharges for compliance is ineffective and cost-prohibitive to conduct accurately. The DNR in cooperation with the United States Geological Survey, other states and local parties have monitored storm water runoff and have spent considerable resources evaluating the efficiency of several storm water treatment devices. The DNR has developed technical design standards based on our research. We have found that the best measure of performance for gauging adequate storm water management is to base it on an annual average design condition. As a result, our runoff (storm water) management performance standards of ch. NR 151, Wis. Adm. Code, are based on annual average discharge conditions and compliance is based on implementation of a design which meets those conditions.

SPECIFIC COMMENTS

1. Comment: (Earth Tech) We suggest the definitions section be placed at the front of the permit.

Response: A note was added to the beginning of the permit to help direct readers to the back of the permit for definitions.

2. Comment: (NEWSC) 1.1 Permitted Area. Define "jurisdiction." The word implies a permitted city or village with extraterritorial review may be responsible for regulating and enforcing permit conditions within an adjacent township. The word may also have implications for a city or village that has a boundary agreement with an adjacent township and conducts planning activities. Does DNR intend that two or more permitted municipalities are responsible for regulating and enforcing permit conditions for the same property?
Comment: (WTA) 1.1, first and second bullet. Delete the words "that are planned"- Chapter NR 216 calls for the urbanized areas requiring a permit as determined by the 2000 census and not "planned areas".
Comment: (NEWSC) 1.1 Permitted Area. Clarify the intent of "urbanized area and adjacent areas that are planned" for development. Is a permitted city or village required to regulate a developed or undeveloped "adjacent area" located within a township? Is the planning period 20 years? Does adoption of an "official map" constitute planning? Does adoption of a boundary agreement constitute planning? This phrase may result in duplication of effort between permitted municipalities.

Response: The term "that are planned" has been removed as undeveloped areas are not intended to be regulated. The objective is for permittees, to the extent that they have authority (jurisdiction), to require and enforce appropriate erosion control and storm water management in adjacent developing areas that are becoming urbanized. There may be jurisdictional overlaps and where multiple permittees have jurisdiction over the same area, one permittee should take the lead. The intent is not to create dual regulation of an area but rather to have local implementation and enforcement in areas that are developing into urban areas.

3. Comment: (WTA) 1.1.1, first bullet. Although ch. NR 216 calls for a minimum density of 500 people per square mile, this threshold criteria is too low. This equates to one dwelling unit per 2.7 acres which will have very little if any stormwater runoff leaving the site during regular rainfall events. Although the Bureau of Census re-defined the urbanized area in 2000 to go from 1000 people/square mile to 500 people/square mile, they did not do this for stormwater runoff purposes. The original intent of the EPA as stated in the December 8 ,1999 Federal Register was to have the urbanized area defined at 1000 people/square mile for the purposes of controlling stormwater runoff.
Comment: (NEWSC) 1.1.1 Permitted Area. The density of 500 people per square mile is not discussed within s. NR 216.02 or 216.025. This density provision appears to increase the amount of land area subject to permit coverage. Section NR 216.02(4) and the EPA fact sheets specify a density of 1,000 people per square mile. Please clarify the intent of the 500 people per square mile density.

Response: DNR's definition of "urbanized area" is consistent with the current federal law definition [see s. NR 216.003(38), Wis. Adm. Code] and the federal definition of urbanized area extends to areas with 500 people per square mile.

4. Comment: (Earth Tech) 1.1.1 The term "urbanized area" needs to be clarified and/or defined. The average reader does not realize that the term "urbanized area" has a very specific meaning as applied to the permit. We suggest the term be capitalized or put in quotes to indicate the specific definition of the term.

Response: These changes have been made.

5. Comment: (WTA) 1.1.3, third bullet. Delete this entire section. The intent of ch. NR 216 is met in the urbanized area and 10,000 population criteria above. To expand this to cover the entire drainage area that contributes to the urbanized area is beyond the intent of ch. NR 216.

Response: DNR also has the authority to designate MS4s for permit coverage other than those in "urbanized areas" or those associated with a municipal population of 10,000.

6. Comment: (NRDC) 1.3 DNR should modify the general permits to conform with the Clean Water Act's requirements that NDPES permits authorize only discharges that do not cause or contribute to violations of water quality standards.
Comment: (MEA) Currently the proposed permits do not include a statement requiring compliance with state and federal water quality standards. In order to comply with the Clean Water Act and state law, the DNR should amend the proposed permits to include a provision that requires compliance with state and federal water quality standards. This provision should be followed by a description of what is required to meet water quality standards.
Comment: (NRDC) The general permits should include water quality based effluent limitations (WQBELS) where necessary to ensure consistency with water quality standards.
Comment: (MEA) WQBELS must be included in the Proposed Permits where permitted discharges are determined to cause, or have reasonable potential to cause excursions above water quality standards.

Response: Sections 1.3.2 and 4.19 of the MS4 general permit have been revised to help address these concerns. In order for discharges to be authorized under the MS4 general permit, the storm water management programs must be designed to bring the MS4 discharge into compliance with applicable water quality standards.

Storm water discharges are not necessarily required to meet or be subject to numeric WQBELs. It is the DNR's responsibility to include the appropriate conditions in the storm water permit that are appropriate or necessary to require compliance with applicable water quality standards. Narrative and performance-based standards are an appropriate and effective means to regulating storm water discharges. The DNR has the authority to withdraw general permit coverage and require individual permit coverage where DNR determines it to be necessary.

7. Comment: (RAW, FMR) 1.3 Water Quality Standards. There is no process to determine whether a municipality is causing or contributing to an exceedance of water quality standards. It seems very unlikely that a municipality would have the tools or knowledge to evaluate this. How will DNR determine it?

Response: Wisconsin law does not require a discharger to monitor receiving waters to which it discharges (i.e., to conduct ambient monitoring). Ambient monitoring activities that are necessary to determine if a receiving water is not attaining its designated use standard are conducted by the DNR. The DNR has a *Water Division Monitoring Strategy* that is composed of 3 tiers of (1) statewide baseline monitoring, (2) targeted monitoring and (3) management effectiveness and compliance monitoring. The DNR utilizes this monitoring strategy to collect needed data. The Water Division Monitoring Strategy is available via the DNR Division of Water Internet site at: http://www.dnr.state.wi.us/environmentprotect/water.html

8. Comment: (NRDC) Require all dischargers authorized by these permits to use technologies that provide the greatest degree of effluent reduction achievable, including no discharge of pollutants wherever practicable. This technology standard is required for all new sources, including dischargers of storm water, pursuant to Section 306 of the CWA.

Response: Existing MS4s are not necessarily subject to such new source standard. The DNR has developed construction, post-construction, and developed urban area performance standards under ch. NR 151, Wis. Adm. Code, that will be implemented via the MS4 general permit. These performance standards are based upon what the DNR considers achievable using best available technologies for storm water treatment.

Antidegradation Law Comments (Sections 1.4 and 1.5)

9. Comment: (RAW) Modify the proposed construction and municipal permits to take into account the existing conditions of the receiving waters, including whether they are 303(d) listed, outstanding or exceptional resource waters. Projects that include these categories of waterbodies should receive an individual permit.
Comment: (FMR) By not addressing the effects of increasing pollutants into state waters that are already impaired, threatened, or exhibit outstanding/exceptional characteristics, the DNR is in violation of several provisions of the Clean Water Act.
Comment: (NWF) The proposed general permits do not acknowledge the existence of the anti-degradation policy, and they certainly do not comply with it. In particular, the proposed general

permits contain no provisions that protect existing uses in all circumstances, protect high quality waters, or protect outstanding resource waters.
At the time that DNR issues or re-issues a general permit, it cannot determine that each potential discharge to a high quality water that might occur under the authorization of the general permit is "necessary to accommodate important economic or social development in the area in which the waters are located."(40 CFR §§ 131.12(a)(2), 132 (Appendix E, § I.B.) and s. NR 207.04(1)(c) requiring an applicant to demonstrate benefits to the community). Before the fact, DNR cannot determine (1) whether a given discharge is associated with "important" economic or social development, (2) whether, in the particular area in which the affected waters are located, lowering water quality is "necessary" for such development, (3) whether all other point sources in the area achieve the highest statutory and regulatory requirements, and that nonpoint sources in the area achieve all cost-effective and reasonable BMPs, or (4) whether water quality will be maintained at a level sufficient to maintain and protect existing uses.
Comment: (NRDC) The general permit should also be modified so as to contribute to the restoration of impaired waters pursuant to section 303(d) of the Clean Water Act, related federal regulations, and applicable state law and regulations.
Comment: (FMR) Discharges to ORWs and ERWs should be by individual permit only, if permitted at all.
Comment: (NWF) Not one of the four proposed general permits prohibit discharges that cause or contribute to existing violation of water quality standards. The prohibition regulation in CFR § 122 applies to state NPDES programs and bars states from issuing permits "[t]o a new source or a new discharger, if the discharge from its construction or operation will cause or contribute to the violation of water quality standards." Both the proposed construction and municipal general permits provides that DNR "may" require additional measures in the case of a water quality violation, but the prohibition regulation does not give DNR discretion in such cases. DNR must prohibit the offending discharges either if no Total Maximum Daily Load (TMDL) has been developed for the affected water body, or if an existing TMDL does not contain an allocation for future growth and a compliance schedule for current permit holders.
Even if DNR revised the general permits to prohibit discharges that cause or contribute to existing violations of water quality standards, it would have to establish a reliable mechanism for identifying illegal discharges and a process for stopping them, unless a TMDL exists. In that case, DNR would have to determine whether the TMDL could accommodate the discharge pursuant to the provisions of the prohibition regulation before the discharge could be authorized.
Comment: (RAW, FMR) The permit states that "if the DNR determines that the discharge of storm water contributes to an exceedance of any applicable water quality standard" that it *may* require the permittee to develop and implement an action plan or submit data that demonstrate the water is attaining standards. However, based on federal law, the DNR cannot issue permit coverage that will allow exceedances of water quality standards nor issue permits when it will allow contribution to existing impairments (without TMDLs or if TMDLs have not adequately addressed the additional storm water pollution contribution). The current permit does not include a description of how these issues will be addressed. This will be an issue in the Milwaukee area where many of our urban waters are already impaired for sediment.
Comment: (NRDC) The general permit should be changed to achieve greater consistency with the anti-degradation policies [NR 102.05(1) – general policy; NR 102.10 – Outstanding Resource Waters (ORWs); and NR 102.11 - Exceptional Resource Waters (ERWs)].
Comment: (MEA) To ensure that Wisconsin's highest quality waters are not unnecessarily degraded, storm water discharges to those waters should be excluded from the general permit. Instead, individual permits should prohibit discharges of storm water pollutants and include requirements to ensure that the zero discharge standard will be met. These include Outstanding Resource Waters, Exceptional Resource Waters, and waters on which Wisconsin tribes have federally recognized treaty rights to hunt, gather, and fish.

Response: Section 1.4 of the MS4 general permit was added to require that regulated MS4 discharges comply with standards that the DNR believes are appropriate for MS4 discharges to ORWs and ERWs. Chapter NR 207, Wis. Adm. Code, is used to apply antidegradation standards for protection of Outstanding Resource Waters (ORWs) and Exceptional Resource Waters (ERWs). ORWs and ERWs are defined under ss. NR 102.10 and 102.11, Wis. Adm. Code. The intent of ORW and ERW status is to prevent new or increased discharges of pollutants to such waters. However, note that ch. NR 207 was written to account for discharges that were required to have permit coverage prior to March 1, 1989 and it did not account for existing storm water discharges that until now, were not required to have WPDES permit coverage. MS4s are allowed to discharge without WPDES permit coverage until such time that the owner or operator is required by DNR to obtain permit coverage under subch. I of NR 216, Wis. Adm. Code.

Again, the intent of the ORW and ERW status is to prevent new or increased discharges to such waters. However, existing MS4 discharges to ORWs and ERWs may continue to discharge to such waters. The MS4 general permit will not allow a new MS4 discharge of pollutants to an ORW or ERW unless the storm water management programs required under the permit are designed to ensure that any new MS4 discharge of pollutants will not exceed background levels within the ORW or ERW. If the permittee has an existing MS4 discharge to an ORW, it will not be allowed to increase the background pollutant concentrations within the ORW above that which already exists in the ORW under the influence of the existing MS4 discharge. If the permittee has an existing MS4 discharge to an ERW, it may increase the discharge of pollutants provided the increased discharge would not result in a violation of water quality standards.

Section 1.5 of the MS4 general permit was added to require that the MS4 discharges comply with a standard that the DNR believes is appropriate for MS4 discharges to 303(d) impaired waters. The intent of the impaired waters status is to have a TMDL developed and approved which allocates a level of pollutants that can be discharged to the water body in order for it to meet its designated water quality use potential. The intent is to reduce existing pollutant levels and not add additional pollutants until a TMDL is established which allocates wasteloads that may be discharged for the water body to be restored to its designated water quality potential. The MS4 general permit will be authorizing coverage to <u>existing</u> MS4 discharges. The DNR acknowledges that the population may increase and new development may occur within the MS4 service area but it is unrealistic to expect the MS4 general permit to prevent such population increase or development from occurring. Rather, the MS4 general permit standard has been set to reduce, with the goal of eliminating, the discharge of any pollutant of concern to an impaired water body until such time that a TMDL wasteload allocation is established. When the TMDL wasteload allocation is established, the MS4 discharge will need to design and implement its storm water management programs to comply with the allocation as soon as possible. This standard is expected to result in a reduction in the discharge of pollutant(s) of concern to impaired waters from existing developed areas. Areas of new development or redevelopment that involve one or more acre of land disturbance require coverage under a construction site storm water discharge permit. The Department expects to reissue the construction site storm water general permit by the end of March 2006 with requirements that address the concern of construction sites discharging pollutant(s) of concern to impaired water bodies.

<u>Watershed Permitting Comments</u>

10. <u>Comment</u>: (NRDC) A watershed permitting system would be beneficial and assist in implementing the permits in order to achieve compliance with Section 303(d) and anti-

degradation requirements. NRDC recommends use of a watershed permitting approach for both the Construction Site Storm Water and MS4 permits.

Alternative 1: Watershed Permitting: DNR could transition to a watershed-based general permitting system. Specific protections would be developed for entities on a watershed by watershed basis. NRDC recommends that Wisconsin use its 24 watershed management units, or its 23 Geographic Management Units, as a baseline for developing watershed permits.

Alternative 2: "Hybrid" – Statewide general permit with specific limitations by watershed. DNR could develop different limits for various covered entities within the general permit by watershed. Ideally, the default standard would be zero discharge, and control strategies designed to meet that standard, or at least to get as close as possible, would be developed for each watershed. The permit could choose from a "menu" to create watershed-specific limits, requirements and water quality protection strategies by watershed and apply the limits and strategies on a watershed-by-watershed basis within a single statewide general permit scheme. While this alternative is less desirable than a straight-forward watershed general permitting system, it is suggested in the event that DNR rejects the first recommendation. This latter approach would ease the paperwork and administrative burden on agency personnel, but would reduce public input into the process of selecting specific storm water permit limits by watershed.

Alternative 3: Pilot project in one or more watersheds. DNR could launch a pilot project in at least one watershed if the agency is not prepared to transition to a watershed permitting approach statewide. NRDC suggests the Lower Chippewa and St. Croix watersheds as candidates for consideration due to the adverse effects of sprawling development from Minneapolis and St. Paul on these watersheds.

Comment: (FMR) FMR supports a watershed permitting system or "hybrid" system as advocated by NRDC and others, which would allow for some flexibility or a "menu" of limitations that could be applied on a watershed-by-watershed or permit-by-permit basis. This approach could allow local staff in Milwaukee to perhaps have higher standards and individual permits for ORWs and ERWs, and to require more information from projects affecting impaired waters.

Response: We are unaware of any storm water permit requirement adjustments that would result in benefits sufficient to justify varying general permits on a large scale watershed to watershed basis as suggested. Rather, selection of appropriate storm water management practices needs to be designed based on the local MS4 drainage area, source areas and/or receiving waters. The management practices will vary based on type of MS4, land use served by MS4, cost and/or availability of land to install storm water management practices, etc., as well as the quality of the receiving water, which may vary even on a mini-watershed basis.

Currently, the DNR has 62 municipalities covered under 20 individual MS4 permits. Nine of the individual permits regulate multiple MS4s as "co-permittees". These co-permittees could be viewed as being covered under mini-watershed or group MS4 permits. These individual permits were developed to foster cooperation between municipalities to meet common goals and objectives. Based on DNR's 10+ years of experience in developing these MS4 individual permits, the DNR knows it does not have the resources to continue to utilize only MS4 individual or group permits. Therefore, the MS4 general permit has been developed. The DNR has designed the general permit so that municipalities have the flexibility to work together with neighboring municipalities to achieve watershed or local area water quality goals that the mini-watershed or group MS4 permits allow.

11. Comment: (WTA) 1.7 and 1.8 Suggest inserting "are located in or adjacent to" and deleting "affect". "Affect" is too open-ended.

Response: The proximity to these resources is not necessarily the concern but rather whether the discharge affects these resources. The Department believes that affect is the appropriate term.

12. Comment: (FMR) 1.9 The general permit narrative prohibitions on discharges are good and should be retained.
Comment: (WTA) 1.9 General Storm Water Discharge Limitations. The word "unreasonable" should be defined in quantifiable terms such as those pollutant levels which cause a fish kill.
Comment: (WTA) 1.9.2 Delete the word "sheen". A very small amount of oil can cause a noticeable sheen. To require towns to control oil in such small amounts is unreasonable and expensive.

Response: This section does not require controlling all visible sheen. However, it requires controlling an amount, which has an unreasonable affect on the receiving water. There does not have to be a fish kill for the discharge to have an unreasonable effect on the receiving water.

13. Comment: (NEWSC) Consider replacing the word "person" with "another entity". [in section 1.5 "Responsibility" of the proposed permit].

Response: This change has been made but this language has been moved to the initial paragraph under section 2. of the MS4 permit.

14. Comment: (Earth Tech) 1.10 Obtaining Permit Coverage. This section should include information on where the NOI form is available if possible.

Response: This information has been added.

15. Comment: (WTA) 1.10.2 Delete this section and replace with the following rewording "coverage under this permit should become effective upon receipt of NOI by the DNR." This notification would be similar to Construction Site General permit.

Response: The Department believes that such a change would conflict with federal law, as a meaningful review of the NOI is required prior to granting permit coverage.

16. Comment: (FMR) 1.11 The MS4 general permit application process is much better than the construction general permit in that coverage of municipalities is not effective until the DNR sends a letter authorizing that coverage, and coverage is not automatic as in the construction permit. It will also be much easier for the public to review and comment on MS4 general permits than construction permits, because the NOIs are going to be available on the DNR website. FMR also recommends that municipalities submit required components of their storm water management plans (as shown on compliance schedule chart) digitally to the DNR, and that as much of this information as possible should be uploaded onto the DNR website. This will reduce clerical work for DNR staff and make it easier for the public to watchdog municipalities to assess their compliance.

Response: Comment noted.

17. Comment: (WTA) 1.11 Public Access to Notices of Intent. Suggest deleting this section. Although NOIs are public information and are available upon request, posting them on the web-site is not necessary.

Response: The DNR will be listing the MS4 NOIs received on its web site.

18. Comment: (RAW) Information on activities covered under this general permit should be widely accessible to the public, and educating the public about the municipal storm water management process is important.

Response: Section 1.11 was added to the MS4 general permit to explain how to obtain access to NOIs and other records submitted to the DNR.

Reasonable Potential Analysis

19. Comment: (MEA) The DNR must apply a RPA to determine whether there may be a violation of water quality standards, and whether an individual permit and additional WQBELs may be need to meet water quality standards.
Comment: (MEA) The DNR is required to conduct a Reasonable Potential Analysis (RPA) to determine whether some stormwater pollutants are likely to cause or contribute to an excursion above water quality standards so that additional and site-specific controls can be put in place to meet water quality standards. Recognizing the difficulty of conducting an RPA within the context of general permits, the DNR should prepare the RPA as part of reviewing the Notice of Intent.
Comment: (MEA) If the DNR does not exclude 303(d) listed waters from general permit coverage, the DNR is required to prepare an RPA on all waters on the 303(d) list for storm water associated pollutants before allowing coverage under the proposed permit so that additional site-specific controls aimed at zero discharge can be put in place to meet water quality standards.
Comment: (MEA) If the DNR does not exclude the Exceptional Resource Waters and Outstanding Resource Waters from general permit coverage, the DNR is required to prepare an RPA for all stormwater discharges to those waters to ensure that the high quality of those waters will be maintained despite the stormwater discharge. *See* Section I.B., General Overview Comments, above.

Response: The reasonable potential already exists for existing MS4 discharges to exceed or contribute to the exceedance of a water quality standard. This condition does not prevent the use of a general permit. However, an MS4 permit must be designed to bring the MS4 discharge into compliance with applicable water quality standards. Therefore, the MS4 permit requires that storm water management programs be designed and implemented to reduce pollutant discharges to achieve applicable water quality standards. The MS4 general permit has been developed to apply to various types of MS4 discharges and for discharges to various types of receiving waters including discharges to ORW, ERW and 303(d) impaired waterbodies. The DNR will be reviewing the NOI and various permit-required programs. If the DNR finds that the permittee's discharge is not meeting applicable water quality standards then the DNR may require the permittee to redesign its storm water programs to meet water quality standards or require the permittee to apply for coverage under an individual permit.

20. Comment: (NRDC) Applicants submitting NOIs should be required to affirmatively identify whether they are discharging to a water body impaired by sediment (or some measure thereof) and whether or not there is a total maximum daily load (TMDL) for sediment for that water body. It should also indicate whether the discharge is into an ERW or an ORW.

Response: The Notice of Intent will have the applicant identify whether they discharge to ORW, ERW or an impaired water body. Sections 1.4 and 1.5 of the MS4 permit have been added that require the permittee to meet a higher level of control for discharges to such waters. The storm water management programs are required to be revised to comply as soon as possible with any TMDL wasteload allocation set for any water body to which it discharges.

21. Comment: (NRDC) Municipal permits should contain a minimum waiting period and ensure that some affirmative decision is made by Wisconsin DNR personnel that applicants have met the applicable requirements. We recommend adding a 14-day waiting period to the MS4 permit. Comment: (NWF) DNR cannot provide a meaningful public process regarding potential degradation of the state's waters prior to the time when members of the public become aware of the nature and location of specific discharges covered by the permit. The type of agency review—and public participation—required by the anti-degradation policy for high quality waters is impossible prior to the identification and evaluation of specific discharges into specific waters. The DNR's review, therefore, must be conducted at the time new individual discharges are proposed, not on a statewide basis through general permits.

Response: Section 1.12 of the permit was added to clarify the time period during which the public should submit comments on NOIs that the DNR receives for coverage under this MS4 general permit. DNR will post on its website any NOIs it receives for at least 30 days prior to granting MS4 general permit coverage. The DNR will consider all comments and requests for public hearing that are made during this 30-day period. The DNR will be authorizing coverage under the MS4 general permit by letter to the MS4 owner/operator but this will not occur until after the DNR has reviewed and considered public comments, any requests for informational hearing, and conducted its own review of the NOI.

22. Comment: (WTA) 1.13. Transfers. Many portions of towns that are in the urbanized areas will be annexed into villages and/or cities in the near future. Some of these neighboring communities have worked out annexation agreements so they know how much of the town will be annexed in the future. If annexation occurs, the transfer of that portion of the town to the village/city should be automatic and written into the annexation agreement. If the entire urbanized area of the town is annexed, the town should be allowed to withdraw from the permitting program and transfer the permitting responsibility to the annexing village/city.

Response: DNR must be notified of such change and will make a transfer of coverage or termination as appropriate.

23. Comment: (WTA) 1.14.2 See general comment above on agricultural practices. Spills of agricultural waste product on town roads should also be added to this section as an exclusion.

Response: The permittee will be responsible for taking appropriate actions to address spills of agricultural waste that enter its MS4. Section 1.14.2 of the MS4 permit has an exclusion for discharges from agricultural facilities and agricultural practices. However, this agricultural

exclusion does not include spills of agricultural waste product such as ethanol, pesticide or liquid manure that may spill on a residential or commercial street.

24. Comment: (Earth Tech, NEWSC) 1.14.3 Other Excluded Discharges. This section seems to imply that a permitted municipality is not required to enforce regulations (construction sites > 1 acre and permitted industries) if they are covered by other permits, such as construction sites which have a ch. NR 216/NOI permit from the DNR or Department of Commerce. This exclusion appears to contradict permit requirements contained within Section 2.4, Construction Site Pollution Control. Does the DNR intend that ch. NR 216 permitted industries are not to be included in SLAMM analysis to establish a permittee's base TSS level?

Response: The exclusion was clarified in the permit as construction sites are subject to dual regulations by the permittee under local ordinance and also by DNR under subch. III of NR 216. If a permittee were approved as an Authorized Local Program (ALP) under s. NR 216.415, Wis. Adm. Code, then it would be delegated authority to authorize coverage under the DNR storm water construction site general permit on behalf of DNR.

The DNR has developed an MS4 modeling guidance memo that discusses what areas to include and exclude in the modeling analysis and it is available on the DNR Internet site at: http://www.dnr.state.wi.us/org/water/wm/nps/stormwater/techstds.htm.

25. Comment: (NEWSC) 1.14.4 Indian Country. This section implies a permitted municipality may be required to obtain permit coverage from both the State of Wisconsin and EPA if municipal boundaries extend into "Indian Country."
Comment: (Earth Tech) 1.9.7 The wording seems to imply that an MS4 outfall within "Indian Country" is excluded from permit coverage. It is unclear as to the municipality's responsibility or authority to regulate storm water pollution from or within "Indian Country."

Response: If a municipality has an MS4 outfall within Indian Country, the municipality will need to get coverage of this MS4 outfall directly from the U.S. EPA. It is expected that U.S. EPA would require the same MS4 permit requirements that are contained under the Wisconsin DNR's MS4 general permit.

26. Comment: (Earth Tech) 1.14.5 Exclusions. From reading other sections (2.7.3) it appears that storm water pollutants conveyed to surface water not through an MS4 (e.g. sheet flow or a privately owned storm sewer) are not regulated under the general permit. If this is the case, section 1.9 should include this condition under the "Exclusion" list. If this is not the case, then Section 2.7.3 needs to be modified.

Response: This exclusion was added to section 1.14.5.

27. Comment: (FMR) 2. Permit Conditions. It is unclear how DNR will determine that a permit condition is "not appropriate" and should be obviated from compliance. Given our extremely significant local problems with SSOs and CSOs in Milwaukee, clarification of these requirements is important and will help make the DNR's job of assessing permit compliance easier.
Comment: (RAW) DNR should be much more explicit when it determines that a permit condition is not appropriate.

Comment: (MEA) The proposed permit should remove this provision (that DNR can given a written determination that a condition is not appropriate) as it is really something that requires an individual permit.

Response: This permit is intended to regulate many types of MS4s including those owned or operated by cities, villages, towns, counties, and state and federal facilities. It is expected that certain case-by-case decisions will require enforcement discretion as to what requirements may not be necessary or appropriate for specific permittees. DNR will be giving a written determination where DNR makes such case-specific determination that a condition is not appropriate. For example, where the permittee owns all of the land that drains to its MS4, it may be unnecessary to develop erosion control and storm water management ordinances since they are used to enforce against other landowners of construction and post-construction sites. Instead, it may be adequate for the permittee to establish erosion control and storm water management standards/procedures that they follow themselves. The DNR may revise the permit when it is reissued to include specific waivers that go beyond case-specific waivers.

28. Comment: (NEWSC, RAW) 2.1 Public Education and Outreach. Measurable goals for the education and outreach program should be outlined somewhere in this section. Measurable goals are mentioned in the fact sheet, but not in the permit.

Response: The requirement to establish measurable goals for each of the program elements has been incorporated in the MS4 permit. Goals have been established for certain program elements such as the TSS control standard for existing urban areas. For education and outreach, the MS4 permit directs where certain activities require education and outreach but the permittee is allowed to develop its own measurable goals (means of showing success).

29. Comment: (NEWSC, RAW) 2.1 Public Education and Outreach. We recommend that the first sentence of the opening paragraph read "The permittee shall implement a public education and outreach program to increase the awareness of storm water pollution impacts on waters of the state and change behaviors to reduce such impacts." Strike "to distribute materials to the public or conduct equivalent public outreach" because distributing materials is only a small portion of an effective education and outreach program. The "change behaviors" language is removed from section 2.1.2 and added to the opening paragraph because it refers to all subsections 2.1.1—2.1.8.

Response: This change was made. However, "change behaviors" was changed to "encourage changes in public behavior".

30. Comment: (WTA) 2.1.1 Towns do not have illicit discharges because they have above-ground MS4s and very little industrial/commercial areas. Many towns will have trouble educating the public because they don't understand what an illicit discharge is.

Response: Illicit discharges are not limited to below ground MS4s but also can be present in above ground MS4s systems. The University of Wisconsin-Extension is working on developing a brochure to help give a basic understanding of illicit discharges. It is expected to be available before March 2006 and DNR will have a link to this brochure from the DNR storm water web site: http://www.dnr.state.wi.us/org/water/wm/nps/stormwater.htm

31. Comment: (WTA) 2.1.3 This section doesn't apply to towns- many don't have leaf pickup or residents don't use lawn fertilizer.

Response: Picking up leaves and grass clippings are not required but should be implemented where necessary or appropriate. If a town does not fertilize its properties then the municipal fertilizer control requirement is automatically met.

32. Comment: (WTA) 2.1.5 This section doesn't apply to towns-all are disconnected anyway due to large lot size.

Response: If all areas are already disconnected then this requirement is already met.

33. Comment: (WTA) 2.1.6 The DNR's and/or counties' responsibility is to educate on erosion control and not the towns. Most towns do not administer their own erosion control ordinance and defer to the county.

Response: Towns should help to direct (inform) those involved with the design, installation, and maintenance of construction site erosion control practices and storm water management facilities on where to get educated in the design, installation and maintenance of such practices and facilities.

34. Comment: (NEWSC) 2.1.7 Strike "such as lawn care companies and restaurants." Providing such examples may alienate that audience. In addition, examples are not provided in all subsections and should be removed here for consistency.

Response: These examples have been deleted.

35. Comment: (NEWSC, RAW) 2.2 Public Involvement and Participation. There is a need for clarification of the type of public participation that is expected. Is public attendance at meetings and notification of hearings, etc. sufficient, or are more active forms of participation expected, such as storm drain stenciling or stream monitoring?

Response: The intent of public involvement and participation program is to get local public support for storm water management activities that need to be implemented under the MS4 permit. Without public support, a municipality will have difficulty getting local approval for the resources needed to implement the program. While the public cannot be required to participate or become involved, it is the hope that local individuals and/or groups will be involved in helping to support or contribute to the implementation of the local program. The municipality must be able to demonstrate that appropriate and reasonable efforts were made to get public involvement and participation.

36. Comment: (NEWSC) 2.3 Illicit Discharge Detection and Elimination. Does the DNR want a say in the types of penalties that can be enforced at the municipal level?

Response: Penalties should be adequate to deter non-compliance and also enable enforcement actions to persuade landowners/operators to bring a construction site into compliance. DNR will review the municipal penalty provisions as part of the ordinance reviews.

37. Comment: (Earth Tech) 2.3.1.1 The word "storm sewer" should be replaced with "MS4" ("storm sewer" is a specific type of conveyance system whereas the MS4 included certain open channel flows).

Response: This change has been made.

38. Comment: (NEWSC) 2.3.1.2 Can other discharges, not specifically listed, be included in this list of non-storm water discharges? If so, what is the process to include such a discharge?

Response: There might be other discharges that qualify. The DNR regional storm contact or program coordinator should be consulted to determine if another discharge can be treated as a non-storm water discharge that is allowable (legal).

39. Comment: (WTA) 2.3.2 –2.3.3 and 2.3.4.1 Delete these sections for towns. It doesn't make any sense to have towns check for illicit discharge in above-ground ditches because they will never find anything.

Response: Above-ground MS4s may be less likely to have an illicit discharge but they still have the potential to be present. It will be easier to inspect an above-ground MS4 system for illicit discharges than a closed system.

40. Comment: (WTA) 2.3.4.2 A source of spills within towns is related to agricultural waste hauling and agricultural operations. These sources are difficult to track down and are not part of the urban permit. Suggest including language that says "the permittee is not responsible for cleaning up spills from agricultural or transportation related services". As described in the general agricultural comments above, agricultural storm water pollution is a matter between the state/county and the individual agricultural operator.

Response: Municipalities will need to take appropriate actions to address spills from agricultural and transportation related services that enter its permitted MS4. Also, see response to comment 23.

41. Comment: (NEWSC) 2.3.4.2—2.3.4.4 Additional guidance and clarification of the spill response and prevention duties required of municipalities would be helpful.

Response: Additional information is available through the DNR spills program Internet page at: http://dnr.wi.gov/org/aw/rr/spills/index.htm

42. Comment: (NEWSC, City of Appleton) 2.3.4.5 Provide guidance on "maximum extent practicable" to ensure uniform enforcement across the state.

Comment: (FMR) It is unclear how DNR will review and judge the standard of "maximum extent practicable" for each permittee—how much is enough to assure compliance with the permit?

Response: DNR expects to develop guidance outside of the permit regarding "MEP" relative to permitted MS4s. However, the DNR does not expect to develop guidance to cover every case-specific situation and case-by-case evaluations of MEP will be necessary.

43. Comment: (WTA) 2.3.4.5 Delete—this does not apply to towns. Most have septic systems. See general inapplicability comment above.

Response: If a permittee does not identify any sanitary conveyance systems leaks, this condition is met. However, even private septic systems have the potential to fail and discharge into an MS4.

44. Comment: (WTA) 2.3.4.6 Delete-Does not apply to towns because of lack of below-ground storm sewer. See general inapplicability comment above.

Response: If no dye testing is performed then this condition is met.

45. Comment: (City of Appleton) 2.3.5 Change 14 days to 30 days. Fourteen days is not a realistic time frame for the city to issue non-compliance notices, have a property owner hire a contractor (if needed) and correct the problem, or for the city to obtain the necessary court orders to correct the problem. Fourteen days means that every illicit connection found will result in a phone call to DNR. It would reduce calls to DNR if a municipality were able to use all the tools available to them before contacting DNR. The time required to actually correct the problem will be the same either way.

Response: It has been changed to 30 days.

46. Comment: (WTA) 2.4. Construction Site Pollutant Control. For many of the towns affected by this permit, Section 2.4 does not apply because the county has adopted, administers and enforces the erosion control requirement. Language should be inserted in here stating that if the county has an erosion control program, then the towns can defer to the county for this section.

Response: Notes were added to the permit at the end of sections 2.4 and 2.5 which read that "a town may demonstrate to the Department that an adequate county ordinance that meets the requirements of this permit is administered and enforced within its town and then the town could be excused from having to adopt its own ordinance."

47. Comment: (FMR) 2.4 – 2.5 The fact that this permitting program goes beyond federal requirements for municipalities or construction sites and includes areas that are adjacent to developing areas whose runoff will connect to the MS4 is very positive. In addition, requiring municipalities to have long term maintenance requirements as part of their ordinances is also good and should be retained in the final permit. However, the construction component of the MS4 general permit exhibits many of the same failings of the general construction permit, in that there is apparently no consideration of how construction activities will affect current uses and water quality (e.g. 303(d) impaired waters, ORWs ERWs, TMDLs, etc.). It also remains unclear

how public involvement and participation and construction site enforcement issues will be addressed by Authorized Local Programs (ALPs). Who will get notified of problems—the DNR or ALP—and who will respond? How will ALPs consult on other resources of concern affected by construction sites including threatened and endangered species, wetlands, and cultural/historical features?

Response: The MS4 permit has been revised to address the need to provide additional protection of ORWs, ERWs and impaired waters under sections 1.4 and 1.5 of the MS4 general permit. This permit is not the mechanism used to oversee an Authorized Local Program pursuant to s. NR 216.415, Wis. Adm. Code.

48. Comment: (NEWSC) 2.4 Construction Site Pollution Control. After the term "sediment", consider adding "and construction materials."

Response: It has been added.

49. Comment: (Earth Tech) 2.4.1.1.1 The second sentence of this section is very unclear regarding "adjacent developing areas." Is there any distinction of the "adjacent developing areas" permit status? Are municipalities expected to coordinate (police) new development in neighboring un-permitted areas outside of the municipality or outside of the Urbanized Area within the permitted municipality?
Comment: (WTA) 2.4.1.1.1 Delete the words "that are planned." Chapter NR 216 calls for the urbanized areas requiring a permit as determined by the 2000 census and not "planned areas." See comment under section 1.1 concerning 500 people/square mile.

Response: This section has been revised and is applied to areas under the "jurisdiction" of the permittee. Section 1.1 of the permit defines the areas where the permit conditions are to be applied (provided the permittee has such authority or jurisdiction).

50. Comment: (NEWSC) 2.4.1.1.3 Replace the word "shall" with the word "may." Chapter NR 216 and s. 101.1205(4), Wis. Stats., should be modified if the permittee is required to request authority from Department of Commerce.
Comment: (City of Appleton) 2.4.1.1.3 The city does not believe that the referenced statute is adequate to require a municipality to request authority from the Department of Commerce to enforce erosion control on their behalf. Regardless of the statute, requesting authority from the Department of Commerce should be voluntary, not mandatory.
Comment: (WTA) 2.4.1.1.3 The towns have no desire to take over the authority to regulate erosion control at public buildings and places of employment from the Department of Commerce and should not be required to do so as part of this permit. The Department of Commerce has their own inspectors for this purpose.

Response: Federal MS4 regulations expect municipalities to oversee construction sites within their jurisdiction. The DNR believes that municipalities including cities, villages, counties and towns should be responsible for overseeing the erosion control and storm water management for the construction of all buildings, including public buildings and places of employment (commercial building sites). Therefore, the requirement to request authority from the Dept. of Commerce to oversee erosion control of commercial building sites remains in the permit for cities, villages, counties and towns.

51. Comment: (WTA) 2.4.1.6 Delete "discarded building materials" because they are difficult to manage and do not cause adverse impacts. Delete "litter" for same reason- difficult to manage and no adverse impact.

Response: We believe that such material especially when carried downstream by storm water runoff can have an adverse impact on receiving waters.

52. Comment: (NEWSC, City of Appleton) 2.5 Post-Construction Storm Water Management. Define "significant re-development."
Comment: (Earth Tech) 2.5 The word "significant" should be removed and cite the definition for "redevelopment" as defined in ch. NR 151.

Response: The word "significant" was removed and a definition of "redevelopment" was added to the permit.

53. Comment: (WTA) 2.5 Same comment as Section 2.4- If a county has a post-construction ordinance, towns should defer to county for this section.

Response: See response to comment 46.

54. Comment: (WTA) 2.5.1.1 Delete the words "that are planned"- Chapter NR 216 calls for the urbanized areas requiring a permit as determined by the 2000 census and not "planned areas."

Response: This section has been revised and the reference to "that are planned" has been removed.

55. Comment: (Earth Tech) 2.5.1.2 DNR should clarify that technical standards take precedence over the Stormwater Manual.

Response: This has been clarified.

56. Comment: (NEWSC) 2.6 Pollution Prevention. The word "program" in the opening sentence needs clarification. For example, does a schedule for street sweeping, catch basin cleaning, etc. constitute a program? Is an educational program for inspectors and maintenance personnel required?

Response: Educating the personnel involved in implementing the program is important and has been added as an element of the program.

57. Comment: (NEWSC) 2.6.2 Please clarify that catch basin cleaning is only required if the catch basin contains a sump and street sweeping is only required if the street contains curb and gutter.

Comment: (WTA) 2.6.2 and 2.6.3 Delete "catch basin cleaning." Towns don't have catch basins. Also many towns do not sweep streets. To require each town to purchase a street sweeper is uncalled for because of the grassed swale treatment.

Response: This permit is designed to regulate more than just town MS4s but all types of municipally-owned and operated MS4s. Street sweeping, catch basin cleaning are not required but should be implemented where necessary or appropriate. On uncurbed roads, it is unlikely that street sweeping would be utilized to meet the existing urban area TSS control standard. Also, unless a catch basin has a sump, catch basin cleaning is unnecessary.

58. Comment: (WTA) 2.6.5 Delete this sentence. Towns do not pick up leaves and grass clippings.
(WTA) 2.6.7 Delete this section. Towns do not fertilize municipally controlled properties.

Response: Picking up leaves and grass clippings are not required but should be implemented where necessary or appropriate. If a town does not fertilize its properties then the municipal fertilizer control requirement is automatically met.

59. Comment: (WTA) 2.6 and 2.7. This entire section should be deleted for towns because they already have installed grassed swales for their stormwater conveyance system.

Response: Grassed swales depending upon their design may or may not provide adequate TSS reduction. Some level of analysis will be necessary to make this determination.

60. Comment: (RAW) 2.7 DNR should not merely recommend, but require, municipalities to conduct pollutant loading analyses within the first 12 months of submitting their Notices of Intent.

Response: We have inserted a comment indicating that the analysis should be conducted as soon as possible to determine what practices need to be implemented by March 10, 2008 to meet the standard. However, the submittal of the analysis demonstrating compliance will remain at March 10, 2008.

61. Comment: (NEWSC) 2.7 This section implies 20% and 40% total suspended solids reduction may be required for the entire municipality, including rural areas. SLAMM and P8 are urban non-point source pollution models. Efforts to quantify rural TSS loads using SLAMM or P8 will likely be inaccurate. Typically, rural roads do not have storm sewer and curb and gutter that would allow ditches, a significant amount of topographic survey may be necessary to determine ditch slopes, cross sections, flow velocities, and TSS removal rates. What is the cost versus benefit relationship for requiring 20% and 40% TSS calculations within rural portions of a permitted municipality.

Response: Rural areas are not regulated under the MS4 permit. However, many urbanized areas are served by open drainage systems (not just rural). These MS4 systems will need to be evaluated to determine what TSS control level they provide.

62. Comment: (Earth Tech) 2.7.1 The reference to the 20% TSS load reduction should specify the TSS load discharging from the MS4 outfalls. This helps to clarify the status of storm water pollution entering waters of the state from sheet flow and private storm sewers. This clarification should be carried through in section 2.7.3 also.

Response: This clarification has been made.

63. Comment: (NEWSC) 2.7.3 This section implies the total suspended solids (TSS) load must be calculated at every outfall. The definition of outfall provided within the general permit does not distinguish between minor or major outfall. Please clarify if the DNR intends that TSS and phosphorus loads be calculated at each outfall regardless of outfall size, drainage area, or flow type (concentrated versus sheet flow). Also, please clarify if the DNR intends that a 20% and 40% TSS reduction must be achieved at each outfall as compared to a municipal average. Some permitted municipalities have already completed the SLAMM or P8 modeling without consideration for individual outfall performance. The consortium recommends that the 20% and 40% TSS reduction be calculated as a municipal average.

Response: The existing urban area TSS standard of 20% and 40% control is based on the annual average mass of TSS across the entire MS4 (not applied to each outfall). Also, permittees may show compliance with the existing urban area TSS standard on a watershed or regional basis by working together with other permittee(s) to provide regional treatment that collectively meets the standard.

64. Comment: (NEWSC) 2.7.3 The final sentence of this section prohibits the use of TSS reduction "credits" for new developments. However, some permitted municipalities have so much existing development the "credits" from new development is the only way to achieve the required TSS reductions. The consortium recommends that the final sentence of this section be struck.

Response: No change. The DNR does not believe that new development "credit" should be given to offset existing development.

65. Comment: (Earth Tech) 2.7.3 The term "no controls conditions" and "baseline" needs clarification. This term may need a separate detailed definition section. The definition in section 5 is not adequate.

Response: The DNR has developed an MS4 modeling guidance memo that is available on the DNR Internet site at: http://www.dnr.state.wi.us/org/water/wm/nps/stormwater/techstds.htm

66. Comment: (RAW) 2.8 Storm Sewer System Maps should also include overlays for designated uses, impaired waters, TMDLs, ORWs, ERWs, wetlands, presence of endangered or threatened species and historic property.
Comment: (MEA) 2.8 The storm sewer map should include the identification of outfalls and overlays for designated uses, impaired waters, Total Maximum Daily Loads, Outstanding Resource Waters, Exceptional Resource Waters, wetlands, the presence of endangered or threatened species and historical use of the property.

Comment: (FMR) 2.8.1 It would be helpful if storm sewer system maps included overlays for designated uses, impaired waters, ORWs, ERWs, and presence of any wetlands, threatened and endangered species, historic/cultural resources, etc.

Response: Requirements have been added to identify the classification of the receiving water, whether it is an ORW, ERW or 303(d) impaired water, and whether there are any known threatened and endangered resources, historic properties or wetland that might be affected by the MS4 discharge.

67. Comment: (Earth Tech) 2.8.1 Define "watershed boundary." It is not clear to what water bodies the watershed boundary should be delineated. Also, add the phrase storm water drainage basin boundaries for each MS4 outfall.

Response: The term "watershed boundary" has been removed. The phrase storm water drainage basin boundary for each MS4 outfall has been added.

68. Comment: (NEWSC, City of Appleton) 2.8.3 How is a local municipality to know who has been issued such a permit? Is the database open to public review? Where can a list of WPDES permitted discharges be obtained? How often does the municipality need to update this list? Provide the appropriate website or other mechanism to be used to comply with this requirement.

Response: It has been clarified in the MS4 permit that DNR will provide a list of WPDES permitted dischargers to the permittee that are in the area of the MS4. A list of storm water permitted discharges is available on the DNR Internet page at: http://www.dnr.state.wi.us/org/water/wm/nps/stormwater/permits/

69. Comment: (NEWSC, City of Appleton) 2.8.4 Is it the DNR's intention to locate both public and private structural storm water management facilities? This section should be clarified.

Response: The MS4 permit has been clarified to have all municipal-owned or operated systems identified. Also, if the municipality will be taking any treatment "credit" for a privately-owned system, they will need to be identified as well.

70. Comment: (NEWSC) 2.9.4 The consortium feels that this requirement is too technical for many municipalities to achieve. Striking everything after "identification of water quality improvements" would be more appropriate. If the DNR is simply looking for a regional perspective on waterbodies, the wording should reflect that more closely.
Comment: (City of Appleton) Delete this paragraph. Appleton does not have the expertise to find the data requested and to make such an interpretation to know whether or not a water body is meeting its designated uses. This would require the city to know what every community in the watershed is doing or not doing in regard to storm water management. This requirement is outside the jurisdiction and authority of a local municipality.
Comment: (RAW) While requiring information on water quality improvements and/or degradation for annual reports is good, we believe that information should also be built into initial storm water management plans and revisions to those plans.
Comment: (FMR) Requiring municipalities to identify water quality improvements or degradation on their annual reports is excellent, and this information should also be included in

initial municipal storm water plans (and subsequent revisions) so that permit compliance can be more easily assessed.
Comment: (Earth Tech) The permitted community cannot be expected to carry out this task. In addition, it is not in the permittee's jurisdiction nor do they have the authority or expertise to determine if/when water bodies are meeting designated uses, and "why they are not." This implies a TMDL process be conducted by the permittee.

Response: DNR has revised this condition to clarify that the permittee is to identify any known or perceived water quality improvements or degradation in the receiving water. The permittee is not expected to conduct a TMDL process.

71. Comment: (FMR) There is also no discussion of how many municipal bypasses would necessitate revisions to the design capacity of the system. This issue needs to be addressed and is especially important in Milwaukee, where MS4 capacity issues contribute to CSOs and SSOs in Milwaukee that degrade the water quality of our rivers and Lake Michigan, which is the source of our drinking water.

Response: The MS4 permit does not regulate discharges to or from CSOs or SSOs. Bypasses from CSOs or SSOs are managed through the CSO or SSO program (not the MS4 program). Although runoff from an MS4s could leak into a CSO or SSO system, from a regulatory standpoint, this issue needs to be addressed through the CSO or SSO program.

72. Comment: (NEWSC) 3 Compliance Schedule. Because of limited DNR staff, there is no guarantee that a submitted program will be reviewed in the 6-month period between submittal and implementation. However, DNR feedback is important before an activity goes into effect. Considerable time and money is spent developing these programs. That time and money will be wasted if a program that does not meet DNR standards is implemented, only to be changed again. Thus, a municipality should not be expected to implement a program until they have received feedback from the DNR.
Comment: (City of Appleton) 3 Although we believe it is the DNR's desire and intent to review every plan submitted within the six month time frame, we do not believe it is realistic based on available staff. Also, if changes to a plan are requested by the DNR, a municipality should be allowed time to modify the program accordingly prior to implementation. Implementing a program that is not approved is an inappropriate expenditure of public funds. We recommend that implementation of the programs begin within six months of program approval by DNR.

Response: Even where DNR reviews program submittals, DNR will still have the authority to request changes after the 6-month review period if it is determined that changes are necessary. DNR understands the concerns of initially starting a program and then having to make changes. DNR will evaluate the circumstances in making such requests to determine a reasonable time period for making changes whether it is during or after the initial 6-month review period.

73. Comment: (City of Appleton) 3 The EPA Phase II included five years to implement the six minimum measures. However, almost two years of the five-year time frame is gone. Local municipalities will only have three years, not five, to implement. The time frames should be extended to allow municipalities the intended five years for implementation.

Response: The permit compliance schedules in the MS4 general permit are based from the start date of coverage and are not based on a date established by EPA .

74. Comment: (RAW) 3 A notification of non-compliance should consist of a written report within 24 hours if it endangers public health or the environment.

Response: This notification process is governed by s. NR 205.07 (1)(s), Wis. Adm. Code. The STANDARD CONDITIONS section of the permits under "Noncompliance" has language that is consistent with this governing code provision. Hazardous substance spills must be reported immediately as required under section 4.6 of the permit.

75. Comment: (RAW) The draft permit offers no explanation of enforcement nor proposes a penalty for non-compliance. (FMR) The compliance schedules and reporting requirements for noncompliance are fairly straight forward; however, there is no explanation of enforcement actions or penalties that will be applied for non-compliance.

Response: Reference to the statutory authority for enforcement and the penalty provision for noncompliance has been added to the permits within the STANDARD CONDITIONS section and titled "Enforcement Action".

76. Comment: (NEWSC) 3 Can DNR stagger start dates to ease workload?

Response: Compliance schedules within the MS4 general permit are staggered for this reason. Start dates will vary for some municipalities. However, DNR prefers to get municipalities covered as soon as possible and operating on a similar timeline.

77. Comment: (RAW) 3 There should be permit language describing how the public can access permit application information—the draft makes no provision for this.
Comment: (FMR) Although record retention by the permit holder is addressed, there needs to be a clear process of how the public will be able to get a hold of MS4 compliance information as well.

Response: Section 1.11 (Public Access to Information including Notice of Intents) was added to the permit for this purpose. Regional DNR staff will be maintaining the storm water files relative to individual permittees.

78. Comment: (NEWSC) 3 The following changes to the compliance schedule are suggested (explanations below).

Permit Conditions	**Activity**	**Due Date to DNR**	**Implement**
Public Education & Outreach—3.1	Submit program	Within 18 months of start date	Within 24 months of start date.
Public Involvement & Participation—3.2	Submit program	Within 18 months of start date	Within 24 months of start date.
Illicit Discharge Detection and Elimination—3.3	1. Submit ordinance	Within 24 months of start date.	Within 30 months of start date.

	2. Submit response procedures	Within 24 months of start date.	Within 30 months of start date.
	3. Complete initial field screening.		Within 36 months of start date.
	4. Submit on-going field screening	Within 36 months of start date.	Within 48 months of start date.

- The committee feels that 12 months is too short a deadline for any program in the compliance schedule. Consultants and/or new employees may need to be hired to meet the Illicit Discharge Detection and Elimination ordinance and response procedures (3.3.1 and 3.3.2) should be extended.
- The due dates for all Illicit Discharge Detection and Elimination activities should be later than those for Construction Site Pollutant Control and Post-Construction Storm Water Management activities (3.4 and 3.5). The state has created model ordinances for 3.4 and 3.5, but not for Illicit Discharge.
- Public Education & Outreach and Public Involvement & Participation (3.1 and 3.2) are important for every activity required under the permit. Thus, the due dates should be equal to the shortest due dates in the compliance schedule.

Comment: (City of Appleton) 3.2 Public Involvement and Participation. If the public is to be involved in all aspects of the permit, all other requirements should be due after this one.
Comment: (City of Appleton) 3 The Appleton budget for the items covered in this permit is typically due by May 15 each year. If the permit is not received in time to prepare the budget and provide proper supporting documentation for budgeted items, they will likely not be addressed until later years. This is especially true for any items that require us to hire a consultant. In order to address the various time frames for local budget processes, no time frame should be less than 18 months.

Response: The suggested changes to the compliance schedules have been incorporated into the permit.

79. Comment: (WTA) 3.3 Illicit Discharge Detection and Elimination. Delete this section. It doesn't apply to towns. See general inapplicability comment above.

Response: See response to comment 30.

80. Comment: (City of Appleton) 3.3.1, 3.3.2 and 3.8 The illicit discharge program and ordinance cannot be developed until the mapping is completed. The mapping time frame should not be shortened, because many communities will need to budget for and hire consultants to prepare their map. Also, the DNR has not produced a model ordinance for illicit discharges. The EPA model ordinance and the guidance document from the Center for Watershed Protection are national and will need to be modified for the local area. The city feels the Illicit Discharge ordinance and program should be given 24 months for submittal to DNR for the following reasons:

- There has been very little discussion of this item statewide to date. There is significant momentum for addressing Erosion Control and Post Construction requirements. That momentum would be lost if we had to quickly change focus to Illicit Discharges.
- To date, typically engineers and zoning administrators have been involved in storm water management. For Appleton, Illicit Discharge is an issue primarily for plumbing inspectors.

- The existing sanitary sewer regulations go a long way to ensure that discharges are sent to the appropriate sewer system.
- This program will require coordination among several city departments (plumbing inspectors, engineers, attorneys, sewer crews, fire department, etc.), which requires additional time to create a program that will work.

Response: This change has been made to allow 24 months prior to submittal of the illicit discharge and elimination ordinance.

81. Comment: (City of Appleton) 3.10 Have the first annual report due March 31, 2007 and have it include the portion of 2005 covered under the permit and all of 2006. This will allow communities to actually get started and have something to include in an annual report.

Response: This adjustment was made and the first annual report will be due on March 31st following the second calendar year (first full year) of permit coverage.

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